ANNUAL REPORT

*for the year ending*
*March 31, 2001*

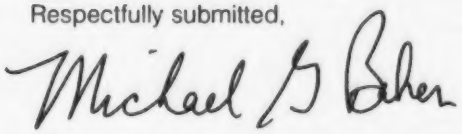
# Workers' Compensation Appeals Tribunal

To Her Honour
The Honourable Myra A. Freeman
Lieutenant-Governor of Nova Scotia

May It Please Your Honour:

I have the honour to submit the Annual Report of the Workers' Compensation Appeals Tribunal for the year ending March 31, 2001.

Respectfully submitted,



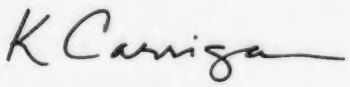
Michael G. Baker, Q.C.
Minister of Justice

Michael G. Baker, Q.C.
Minister of Justice

Dear Honourable Minister:

The Workers' Compensation Appeals Tribunal is pleased to present its Annual Report for the fiscal year ending March 31, 2001.

Respectfully submitted,



Katherine F. Carrigan
Chief Appeal Commissioner

101-05842/

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# Eliminating the Backlog

**REPORT OF THE CHIEF APPEAL COMMISSIONER**

The year 2000 saw the completion of the most important undertaking in the Tribunal's history: the virtual elimination of a 2500-appeal backlog. In addition to eliminating the backlog, the Tribunal was successful in preventing the development of another backlog through the timely resolution of new appeals—those filed with the Tribunal on and after October 16, 1999. This goal was part of the Tribunal's backlog elimination strategy, put in place in 1999. By October 16, 2000, the statutory date for elimination of the backlog, the Tribunal had only 50 "new appeals" awaiting decisions. Another 301 appeals were awaiting submissions and evidence from the participants, and approximately 132 chronic pain appeals had been adjourned by the Workers' Compensation Board.

A significant reduction in the backlog was made in 1999, leaving the Tribunal with only 545 backlog appeals at the beginning of fiscal 2000. Despite the fact that a relatively small proportion of the backlog remained at the beginning of April, the Tribunal faced a number of challenges to the resolution of these appeals. The challenges affected two aspects of the appeal population: chronic pain and environmental illness.

A number of chronic pain appeals were postponed or adjourned pending a decision from the Nova Scotia Court of Appeal regarding the constitutionality of the Act's chronic pain provisions and the Tribunal's authority to decide such issues. The Workers' Compensation Board postponed 67 backlog appeals, and the Tribunal postponed two. Those appeals remained unresolved by October 16, 2000. With receipt of the Court's ruling in November, the Board proceeded to remove its adjournment of the affected backlog appeals in December. This enabled the Tribunal to resolve nearly all of the remaining backlog appeals by the end of the fiscal year.

Among the backlog appeals resolved by the Tribunal in 2000, approximately 250 were "environmental illness" appeals, many of which had been with the Tribunal for a number of years. Following the Tribunal's panel decision, Decision 98-146-AD (February 22, 2000), an opportunity to provide additional submissions was afforded to the participants in the environmental illness appeals. As a result of this submission opportunity, the participants advised the Tribunal that they wished to tender new experts' reports. There was also a subsequent opportunity for participants to comment on chronic pain issues arising in some of the

environmental illness appeals. In addition, the Tribunal had difficulty locating a number of the appellants. These factors led to delays in being able to decide the environmental illness appeals. As a consequence, most of these appeals were resolved in the last three and a half months of the "backlog period."

Aside from chronic pain and environmental illness, the Tribunal rendered decisions of significance and received guidance from the Nova Scotia Court of Appeal in a number of other areas, including the reconsideration of final decisions of the Board; employer assessments; the relationship between the *Government Employees Compensation Act* (GECA) and the *Workers' Compensation Act*; determinations as to whether a right of action is barred by Part I of the Workers' Compensation Act; and the calculation of permanent benefits for workers injured during the "window period"—March 23, 1990 to February 1, 1996.

In addition to the issuance of decisions, the Tribunal worked on several projects of importance over the past year and prepared to introduce some new initiatives in 2001–02. In choosing areas of focus, we were aware that the development of structural and operational systems for the Tribunal had not been given sufficient attention while we concentrated on decision issuance. Consequently, as the backlog diminished and we were able to look ahead to 2001, the Tribunal began some of this important work. In doing so, we were also cognizant of the cost to the workers' compensation system of eliminating the backlog. Efforts have been, and will continue to be made to streamline the Tribunal's operations in order to operate more efficiently, in a cost-effective manner. Some of the measures undertaken and planned for 2001–02 will assist the Tribunal in fulfilling this function.

The following are some of the projects begun or completed in 2000:

- the formation of a Working Group of Appeal Commissioners for the purposes of developing a Code of Conduct for Tribunal members
- the formation of a Working Group of Appeal Commissioners for the purposes of developing information pamphlets for appeal participants
- a formal budget-setting process utilizing the resources of the Finance Division of the Department of Justice
- planning for the offices of Research Officer, Registrar, and Policy Analyst
- planning for the formal, in-house management of appeals before the courts from WCAT decisions as well as some library services

- preparation of compendia by Appeal Commissioners for in-house research purposes, canvassing Tribunal and court decisions on a number of topics

While we accomplished much over the course of the year, we also experienced many challenges due to change. For example, we saw a significant reduction in staffing levels as many of our colleagues left the Tribunal following the expiry of appointments or to pursue other opportunities:

- at the end of March, 2000, our total complement was 34, including 23 Appeal Commissioners

- at the end of March, 2001, our complement was 19, including 13 Appeal Commissioners

Due to the gradual reduction in our Appeal Commissioner complement, teams were reorganized several times during the year. In early March, the reduction in personnel led to a planned consolidation of the Tribunal's two offices and a reintegration of all staff and Appeal Commissioners into the Tribunal's main office and existing systems. The focus of our Appeal Commissioner teams—"Backlog," "New Appeals," "Chronic Pain," and "Environmental Illness"—also diminished. This occurred as the number of issue-specific appeals declined and the backlog itself was eliminated.

Beginning in December, the Tribunal began the transfer of its administrative support services from the Finance Central Service Unit (CSU) of the Department of Environment and Labour to the Justice CSU of the Department of Justice. The move involved human resources, finance, and library services, while the transfer of information technology services was deferred until March.

All of these changes required adjustment by staff and Appeal Commissioners. To some extent the Tribunal continues to adjust and cope with the effects of change.

Looking back over the year, it is clear that the Tribunal's achievements were a result of the significant efforts put forward by our Appeal Commissioners and staff. I would like to take this opportunity to thank publicly all Appeal Commissioners and staff who worked with the Tribunal during the past year for their willingness to engage the challenges we faced and to serve the needs of stakeholders by producing work of a high quality.

I also wish to acknowledge the efforts of the Workers' Compensation Board and the Workers' Advisers Program, both of whom contributed to the successful resolution of the backlog. These agencies worked co-operatively with the

Tribunal, through the system's Tripartite Committee, to resolve and prevent many procedural and administrative problems of a general nature in the appeals process.

In 2001–02 the Tribunal anticipates challenges of a structural and operational nature. We will be participating in the statutory review process while, at the same time, furthering the management structure of the Tribunal and creating a business plan. Policies and procedures must be developed for the administration of the appeals process and a Code of Conduct remains to be adopted for Tribunal members.

We look forward to the realization of some of the important goals of the Tribunal in 2001-2002. Most of all, we welcome the opportunity to provide well-reasoned, concise, and timely decisions to all appeal participants in the coming year.

Katherine F. Carrigan

Chief Appeal Commissioner

# Tribunal Members and Staff

## THE APPEAL COMMISSIONERS

**Rosalie A. (Rose) Armstrong** was a member of the Backlog and Environmental Illness teams. Rose assisted in the ongoing development of a Code of Conduct for Tribunal members.

**Karen Crombie** was a member of the New Appeal and Environmental Illness teams. Karen was also actively involved in representing the Tribunal before the courts and chaired a panel hearing.

**Joyce Dassonville** was Team Leader of the Backlog Team until becoming a part-time Appeal Commissioner in May.

**Jennifer Grandy** was a member of the Backlog and New Appeal teams. Jennifer assisted in the ongoing development of a Code of Conduct for Tribunal members.

**Angela Green** was a member of the Chronic Pain Team and had an opportunity to chair a panel dealing with chronic pain issues. She has been involved in preparing a training manual and in facilitating training in the conduct of oral hearings for Tribunal members. Angela is also working on the creation of information pamphlets for appeal participants.

**Mary Ellen Greenough** was a member of the New Appeal Team. She participated in a panel hearing on the issue of reconsideration of final decisions of the Board.

**John Greer** was Team Leader of the Environmental Illness Team and Acting Chief Appeal Commissioner during absences of the Chief Appeal Commissioner.

**Michael Hadskis** was a member of the Chronic Pain Team. He was a member of several decision-making panels and has been involved in preparing a training manual and in facilitating training in the conduct of oral hearings for Tribunal members. At year-end, Michael was preparing to assume the role of Policy Analyst for the Tribunal in 2001.

**Leanne Hayes** was Team Leader of the New Appeals Team and chaired a panel that addressed employer assessment issues. At year-end, Leanne was preparing to assume the role of Registrar for the Tribunal in 2001.

**Alison Hickey** was Team Leader of the Chronic Pain Team and Acting Chief Appeal Commissioner in the absence of the Chief Appeal Commissioner. Alison

led the development of templates for use in the chronic pain decisions and chaired a panel that decided an application to determine whether an action could be brought against an employer. She was also a panel member of a chronic pain appeal.

**Glen Johnson** was a member of the New Appeals Team. Glen was also a member of the panel that decided an application concerning a bar to suit against an employer. In addition, Glen represented the Tribunal on the Department of Environment and Labour's Library Committee.

**Jeannine Kurtz** was a member of the Backlog Team and the Chronic Pain Team. Jeannine was a member of the panel that decided an application concerning a bar to suit against an employer. She began preparations to assume the role of Research Officer for the Tribunal in the new year.

**Louanne Labelle** was a member of the Backlog Team and was Team Leader of the Environmental Illness Team. Louanne was also actively involved in representing the Tribunal before the courts and will be representing the Tribunal, as counsel of record, in the new year.

**Michael Lambert** was a member of the Backlog Team and the Environmental Illness Team and participated in facilitating training in the conduct of oral hearings for Tribunal members. Mike was also involved in a panel hearing on issues involving the GECA.

**Natalie D. MacDonald** was a member of the Backlog Team and the Environmental Illness Team. She was involved in the development of information pamphlets for appeal participants.

**Alexander (Sandy) Macintosh** was a member of the Chronic Pain Team. He chaired a panel that decided issues concerning the GECA, and was part of a chronic pain panel. Sandy also began preparations for the policy project, which was to start in the new year.

**Matheson MacKinnon** was a member of the New Appeal Team. He was involved in acquiring a CD-ROM of the anatomy for the Tribunal and in identifying medical websites for research purposes.

**Andrew MacNeil** was a member of the Chronic Pain Team and had the opportunity to serve on a panel dealing with chronic pain issues . He was also involved in acquiring a CD-ROM of the anatomy for the Tribunal and in identifying medical websites for research purposes.

**Michelle Margolian** was a member of the Chronic Pain Team. She chaired a working group of Commissioners that began the development of a Code of Conduct for Tribunal members.

**Allen Murray** was a member of the Environmental Illness Team. Allen also did preliminary work to begin the policy development project in the new year.

**Brian Sharp** was a member of the New Appeal Team. Brian was part of the panel that decided issues concerning the GECA.

**Andrea Smillie** was a member of the Environmental Illness Team. She participated in a working group of Commissioners that began the development of a Code of Conduct for Tribunal members.

**Susan Young** was a member of the New Appeal Team. She was involved in acquiring a CD-ROM of the anatomy for the Tribunal and in identifying medical websites for research purposes.

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*"The past year proved to be a challenging one, with the completion of our backlog it meant consolidating two offices and downsizing in both our Appeal Commissioner and support staff complement. The past year also saw many changes in support services, such as the transfer from Labour to Justice. With these changes came many disruptions but as always the "Team" adjusted and carried on. I would like to take this opportunity to especially thank the support staff for all their hard work, co-operation, and dedication through all the challenges in 2000."*

*-Mary Jewers, Supervisor, Office Services*

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## THE STAFF

**Heather Boyle** managed the scheduling of environmental illness appeals and court matters in 2000.

**Carolyn Casey** is a clerk-typist, responsible for typing WCAT decisions and correspondence as well as other clerical duties.

**Charlene Downey** is WCAT's Receptionist. Charlene is the first point of contact for both appeal participants and the general public. She also receives and processes all incoming mail, including Notices of Appeal to the Tribunal.

**Joni Elliott** performed the duties of clerk-typist, which included typing WCAT decisions and correspondence as well as other clerical duties.

**Val Jackson** performed the duties of clerk-typist, which included typing WCAT decisions and correspondence as well as other clerical duties.

**Mary Jewers** is WCAT's Supervisor of Office Services. She is responsible for all aspects of WCAT's office administration and for general supervision of the support staff.

**Brandie Lavoie** is the Executive Assistant to the Chief Appeal Commissioner. In addition to this role, Brandie manages the Tribunal's appeal statistics and provides legal assistance in managing the Tribunal's appeals before the Courts.

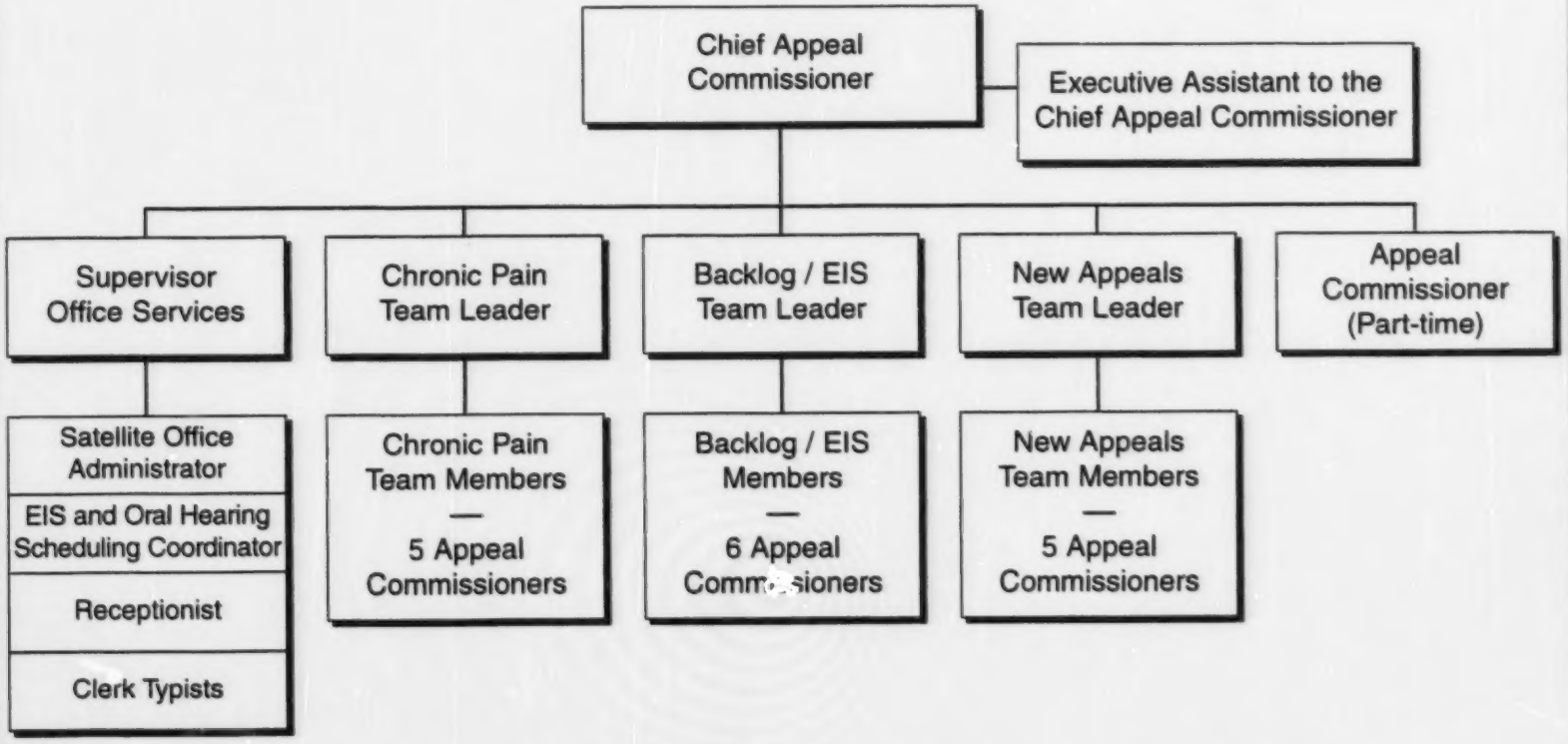
**Charles Marcelli** acted as office clerk for the Tribunal, performing duties such as photocopying, data input, and courier.

**Diane Smith** is a clerk-typist, responsible for typing WCAT decisions and correspondence as well as other clerical duties. Diane also assists the Scheduling Coordinator with her duties and will work closely with the Registrar in the new year.

**Louisette Sorensen** is WCAT's Scheduling Coordinator. Louisette is responsible for scheduling WCAT's oral hearings with appeal participants and assigning Paper Review and Oral Hearings to Appeal Commissioners. Louisette also managed the Tribunal's satellite office until its closure in March. She will be working closely with WCAT's Registrar in 2001–02.

**Wendy Sullivan** performed the duties of clerk-typist, which included typing WCAT decisions and correspondence as well as other clerical duties. Wendy was also involved in data input of statistical information.

# WORKERS' COMPENSATION APPEALS TRIBUNAL
# ORGANIZATIONAL CHART 2000–2001


Chief Appeal Commissioner
Executive Assistant to the Chief Appeal Commissioner
Supervisor Office Services
Chronic Pain Team Leader
Backlog / EIS Team Leader
New Appeals Team Leader
Appeal Commissioner (Part-time)
Satellite Office Administrator
EIS and Oral Hearing Scheduling Coordinator
Receptionist
Clerk Typists
Chronic Pain Team Members — 5 Appeal Commissioners
Backlog / EIS Members — 6 Appeal Commissioners
New Appeals Team Members — 5 Appeal Commissioners

# Developments in the Law

**CHRONIC PAIN**

2000–01 saw the virtual elimination of the Tribunal's backlog of chronic pain appeals. The Tribunal began the year with a backlog of 65 chronic pain appeals (a number subsequently revised to 67). This number remained static until the Board lifted its adjournment of chronic pain appeals in December, following issuance of the Court of Appeal's November 8, 2000 decision in *Martin v. Workers' Compensation Board (N.S.) et al.*, 2000 NSCA 126.

The *Martin* decision resolved appeals from two Tribunal panel decisions released on January 31, 2000: Decision 98-077-AD, which involved a post-February 1, 1996 injury, and Decision 99-641-AD, which involved a pre-March 23, 1990 injury. The Court:

- overturned the determination WCAT had made in an earlier decision (Decision 98-077-PAD [August 27, 1999]) that it had the jurisdiction to refuse to apply provisions of the *Workers' Compensation Act* that violate the *Canadian Charter of Rights and Freedoms*
- overturned WCAT's finding that the provisions of the *Workers' Compensation Act* applicable to these appellants unjustifiably discriminate against workers with chronic pain and thereby violate their rights under s. 15 of the *Charter*
- stated that WCAT did not err in applying the PMI Guidelines to the appellant in Decision 99-641-AD nor in refraining from ordering an assessment under the psychiatric impairment section of the Guidelines

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*"For reasons I will set out at length, I have concluded that WCAT does not have authority to refuse, on* Charter *grounds, to apply provisions of the* Workers' Compensation Act *which confer or limit benefits. In my view, the Act makes it clear that WCAT's role is to provide an independent and prompt review of the Board's application of the Act, not to determine whether the Legislature has exceeded the constitutional limits of its authority. I have also concluded that the challenged chronic pain provisions are not discriminatory. While even the proponents of these provisions recognize that they are inadequate to address the needs of injured workers with chronic pain, the provisions are the result of a decision the Legislature was legally entitled to make."*

*-Martin v. Workers' Compensation Board (N.S.) et al., at page 2*

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While awaiting the *Martin* decision—and the release of the Board's adjournment of chronic pain appeals—the Tribunal rendered 146 "Preliminary Appeal Decisions" between February and December, 2000. These decisions decided the existence of chronic pain without addressing benefit entitlement. In early November, some appellants sought interim awards under s. 248(4) of the Act, while awaiting removal of the adjournment of appeals. Before the Tribunal responded to these requests, the Board lifted its adjournment, on December 8, 2000. The Tribunal immediately proceeded to seek submissions regarding the effect on the appeals of the *Martin* decision.

In submissions received from appellants after the adjournment of appeals was lifted, the finality of the preliminary decisions was challenged and the Tribunal was urged to adjourn the appeals for a further period while an appeal to the Supreme Court of Canada was pending. The Tribunal determined, in Decision 2000-543-AD (January 11, 2001), that it was appropriate to proceed with the appeals and, except where new evidence of a persuasive nature was received, it confirmed the original determination of chronic pain. In February and March the Tribunal resolved all but 4 of the backlog chronic pain appeals and all of the remaining "new appeal" chronic pain cases.

An appeal to the Supreme Court of Canada was launched by the appellant in *Martin* on January 5, 2001, on three grounds reflecting the major determinations of the Nova Scotia Court of Appeal. As of year end, we continued to await a decision on leave to appeal to the Supreme Court.

Both the Tribunal and the Court of Appeal released decisions of note in 2000 on issues related to chronic pain. The following decisions are representative:

- In Decision 99-2004-AD (February 8, 2001), a Tribunal panel addressed constitutional arguments to the effect that ss. 10E(c) and (d) of the Act contravene s. 15(1) of the *Charter*. Those provisions concern whether the appellant was in receipt of temporary benefits or had a claim under appeal as of November 25, 1998. Relying on *Martin*, the panel found that it did not have jurisdiction to consider the *Charter* issues and the relevant provisions of the Act should be applied.

- In *Huphman v. Workers' Compensation Board (NS) et al.*, 2001 NSCA 40 (February 21, 2001), the Court upheld the Tribunal's decision to the effect that the appellant's psychological condition was "connected with his chronic pain," thereby limiting the worker to the benefits provided in s. 10E of the Act. The Court also found that the worker's condition was a "like or related condition,"

within the meaning of s. 10A of the Act. It left open the possibility of additional compensation where a psychiatric condition does not fall within the definition of chronic pain.

- A Tribunal panel, in Decision 2000-450-AD (March 30, 2001), held that although a deceased worker who had committed suicide suffered from chronic pain, his dependants were not prohibited from recovering survivor benefits under s. 60 of the Act. This is of note because the chronic pain provisions in the Act expressly apply only to workers and are silent in regard to survivors. The panel found that the worker's compensable injuries and their sequelae contributed to his/her death in a material degree, thereby establishing an unbroken causal link with the workplace.

**ENVIRONMENTAL ILLNESS**

Among the backlog appeals resolved by the Tribunal in 2000, approximately 250 (45 per cent) were "environmental illness" appeals, many of which had been with the Tribunal for a number of years. There were, in addition, approximately three new environmental illness appeals with the Tribunal at the beginning of April 2000. The backlog appeals, in particular, were subject to changes in the law since submissions and evidence had originally been filed with the Tribunal.

The most important legal changes resulted from the Tribunal's panel decision, Decision 98-146-AD (February 22, 2000), which had found that environmental illness was a form of non-compensable stress. Following that decision, the Tribunal sought submissions from the participants as to the impact of the decision on the remaining environmental illness appeals. Both the Board and the Workers' Advisers Program submitted new expert evidence applicable to all of the appeals.

In addition, the Act's chronic pain provisions and the nature of the evidence in some of the appeals prompted the Tribunal to seek submissions concerning the relationship between environmental illness and chronic pain. As a consequence of seeking additional expert evidence and the potential chronic pain issues, the participants required an extended period in which to provide further submissions and evidence to the Tribunal.

Apart from changes to the law, the whereabouts of some of the appellants with environmental illness had changed. In certain cases this made it difficult to contact the appellants to advise them of their opportunity to provide additional submissions and evidence to the Tribunal.

Faced with these challenges, most of the environmental illness appeals were resolved in the last three and a half months of the backlog period. In order to make this happen, the Tribunal was required to commit the majority of its decision-making resources to these appeals during the period from August to October.

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*"I enjoyed my work as part of the Environmental Illness Team because the issues raised by these cases are unique and complex. Also, I think this is an area where the decisions of the Tribunal have impact well beyond the Workers' Compensation forum."*

*- Andrea Smillie, Appeal Commissioner*

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In resolving the remaining environmental illness appeals, the Tribunal interpreted Decision 98-146-AD as dealing solely with situations where there is no evidence of exposure to specific chemicals, toxins, or other agents in the workplace: Decision 99-1640-AD (April 25, 2000). In many cases, the new expert evidence before the Tribunal was sufficient to persuade decision makers to find that appellants did not suffer from a non-compensable, stress-based disorder. As a result, the findings in Decision 98-146-AD were distinguished, and the panel's conclusions were not adopted in the majority of cases. Ultimately, entitlement to compensation and benefits was determined on a case-by-case basis through the application of ordinary principles of causation, rather than the stress-based exclusion in s. 2(a) of the Act.

**RECONSIDERATION OF FINAL DECISIONS OF THE BOARD**

In Decision 99-2250-AD (May 30, 2000), the Tribunal adopted an approach to the issue of the reconsideration of final decisions which differed from that set out in a previous Tribunal panel decision. The previous Tribunal decision—Decision 99-1882-PAD (March 6, 2000)—had found Board Policy 8.1.7R1, which deals with reconsiderations on the basis of "new evidence," to be inconsistent with s. 185(2) of the Act. Decision 99-2250-AD, to the contrary, held that the policy was consistent with the Act as "... a restatement of the well established test for the receipt of fresh evidence once a final judgement has been pronounced." Decision 99-2250-AD was adopted by the majority of the Appeal Commissioners and was followed in subsequent decisions dealing with reconsideration on the grounds of "new evidence."

On November 23, 2000, the position adopted by the majority of the Tribunal was affirmed by the Nova Scotia Court of Appeal in *MacDonald v. Workers' Compensation Board (N.S.) et al.*, 2000 NSCA 134, on appeal from the Tribunal's earlier decision—Decision 99-1882-PAD. The Court stated that the Tribunal erred in its legislative interpretation by failing to consider that the Act provides for a completely new review regime from that which existed under the former Act. The

Tribunal also failed to recognize that while the Board has the discretionary power to reconsider a decision, a worker does not have a right to reconsideration, following the repeal of s. 196 of the Act.

In addition to its conclusions, the Court raised for consideration two issues that it declined to resolve in the appeal:

- whether additional evidence can also be considered in a "new evidence" reconsideration appeal

- whether the Tribunal ought to have considered the merits of the claim once it determined that the evidence in question was "new"

Following the decision in *MacDonald*, an Appeal Commissioner found that certain questions surrounding the "new evidence" policy raised issues of law and general policy that should be reviewed by the Board of Directors. Consequently, the Appeal Commissioner made a reference to the Chair of the Board, under s. 247(1) of the Act, on February 28, 2001. The issues addressed in the reference were whether additional evidence can be considered under the "new evidence" policy and whether the Board has discretion to reconsider a Tribunal decision under the policy. The appeal under which the reference was made, and all other appeals that raised the same issues, were postponed or adjourned while the issues were being considered by the Board. The reference to the Chair remained outstanding as of March 31, 2001.

**GOVERNMENT EMPLOYEES COMPENSATION ACT (GECA)**

In 2000, the Tribunal had occasion to render decisions on issues involving the application and interpretation of the *Government Employees Compensation Act* (GECA) and its relationship with the provincial *Workers' Compensation Act*. We also received guidance from the Court of Appeal in this area. GECA is the legislation that covers employees of the federal government with respect to workplace injuries.

In a panel decision released on October 2, 2000 (Decision 2000-29-AD), WCAT confirmed that eligibility must be determined utilizing the provisions of GECA rather than the provincial *Workers' Compensation Act*. The decision went on to find that accidents involving injuries that developed over time (as opposed to traumatic events) are included within the eligibility definition in s. 4(1) of GECA. In the course of the decision, the panel also had the opportunity to formulate the test for claims under GECA involving "stress."

Of particular significance was the panel's consideration of the standard of proof applicable to determinations of eligibility for benefits under GECA. On this issue,

the panel was divided. The majority of the panel indicated that the civil standard—the balance of probabilities—applies, noting that the Act is silent on this question. In a dissenting opinion, one of the panel members held that s. 187 of the provincial Act is the applicable standard.

Shortly after the release of Decision 2000-29-AD, the Nova Scotia Court of Appeal heard an appeal from another Tribunal decision in which eligibility for benefits was at issue in the context of the GECA. In *Salloum v. The Nova Scotia Workers' Compensation Appeals Tribunal and the Workers' Compensation Board of Nova Scotia*, 2000 NSCA 148 (December 28, 2000), the Court considered an appeal arising out of a federal worker's claim that environmental illness was a personal injury caused by accident arising out of and in the course of her employment.

The Court concluded that the right of appeal under s. 256(1) of the Act is an additional right not provided for in the federal legislation. Consequently, an appeal could not be brought to the Court under GECA. Chipman, J.A., further indicated that judicial review is available. The Court did not go on to explicitly address the standard of proof in GECA cases, but stated that "compensation-related rights and benefits provisions of provincial statutes" do not necessarily extend to matters for which GECA fails to provide.

*Salloum* also raised several other questions that may be addressed by the courts in future decisions:

- To what extent does the provincial *Workers' Compensation Act* apply in cases involving federal employees who have sustained accidents of a traumatic nature, rather than developing occupational diseases?

- To what extent does the provincial *Workers' Compensation Act* apply to questions of ongoing benefit entitlement, that is, after initial entitlement has been established?

**TRANSITIONAL PROVISIONS**

The issue of calculation and recalculation of permanent benefits for "window period" injuries was again addressed by the Court of Appeal in 2000. In *Workers' Compensation Board v. Ryan*, 2000 NSCA 56 (May 1, 2000), the Court of Appeal allowed an appeal from a Tribunal decision, while acknowledging that the meaning of the transitional provisions and, in particular, s. 228, "has been a source of difficulty for injured workers, the Board, the Tribunal and this Court." The Court interpreted one of its earlier rulings to the effect that entitlement to compensation for the period March 1990 to February 1996 should be made in accordance with the former *Workers' Compensation Act*.

The Court held that awards under s. 228 of the Act should be in keeping with the manner in which the Board actually awarded benefits for permanent injuries prior to implementation of the new Act, as opposed to the earnings-loss basis mandated by the Court's *Hayden* decision. The Court endorsed the seven steps for determining the window period award advanced by the Tribunal, subject to the proviso that the award should be calculated using the policies of the Board in place during the period for which benefits are sought. The Court also held that s. 228 has the effect of legitimizing awards made according to the Board's policies relating to the calculation of benefits in place at the time.

**EMPLOYER ASSESSMENTS**

The Court of Appeal, in *Halifax Employers Association v. Workers' Compensation Appeal Tribunal (N.S.) et al.*, 2000 NSCA 86 (July 14, 2000), upheld the Tribunal's first decision in relation to employer assessment issues. The Tribunal's panel decision, Decision 99-580-DA (October 12, 1999), had approved the industrial classification for rate-setting purposes of one of the businesses in question and had recommended reclassification of the other, applying the "principal activity" test.

Also of note in the area of employer assessments, is Decision 99-1951-AD (April 17, 2000). This decision concerned an appeal by an employer from the imposition of a penalty for late payment of an assessment premium. The Commissioner held that s. 187 of the Act—the standard of proof provision—does not apply to assessment appeals; rather, the "balance of probabilities" is the applicable standard. The Commissioner also held that the assessment portions of the Act are analogous to taxation legislation such that an interpretation that favours the employer should be adopted where the intention of the legislature is unclear.

The Commissioner also considered whether the current or the former policy specifying the applicable penalty should be applied. While the current policy states that it pertains to all decisions made after its adoption, s. 183(6A) of the Act provides that the Board cannot make policies retroactive unless they benefit a worker. Since the policy in question does not apply to workers, the Commissioner found that retroactive application would be inconsistent with the Act.

**SURVIVOR BENEFITS**

The Tribunal considered two decisions of the Court of Appeal concerning benefits available to survivors under the Act. The first, *Ferneyhough v. Workers' Compensation Appeals Tribunal* (N.S.) (2000), 189 N.S.R. (2d) 76, addressed the test for causation under s. 60(1) of the Act in a situation involving occupational disease and a worker's death. Section 60(1) provides that survivor benefits are payable " ... where a worker dies as the result of an injury ...". At page 82 of its decision, the Court of Appeal identified the correct standard for determining whether the necessary causal link has been established. It stated that the

occupational disease must be a contributing cause in the sense that, "but for" the occupational disease, death would not have occurred when it did or that the injury contributed to the death in a "material degree." The Court went on to state that, "The term "material degree" should be understood ... to mean something beyond the de minimis range, that is, something that is not negligible."

The *Ferneyhough* test was applied by the Tribunal in a number of appeals, including a panel decision, Decision 2000-450-AD (March 30, 2001). In that case, the cause of death was not occupational disease, but suicide. Nevertheless, the panel found that the workplace injury and its sequelae—chronic pain and psychological/psychiatric problems—contributed in a material degree to the worker's death.

The second decision of the Court is that in *Bauman v. Nova Scotia (Attorney General)*, 2001 NSCA 51 (March 29, 2001). While the Tribunal has not had occasion to apply the Court of Appeal's judgment in *Bauman*, the decision is noteworthy. It has been given due consideration by Appeal Commissioners for its pronouncements on the law regarding the constitutionality of survivor benefit provisions as they relate to widows in receipt of a survivor pension prior to April 17, 1985 who remarried before that date.

**DETERMINATIONS AS TO WHETHER RIGHT OF ACTION IS BARRED**

The *Workers' Compensation Act*, in s. 29, gives the Tribunal authority to determine whether a right of action against an employer is barred by Part I of the Act. Section 28(1) of the Act sets out the historic trade-off between workers and employers, namely, that the rights provided under Part I of the Act are in lieu of all rights and rights of action against an employer subject to Part I, as a result of personal injury by accident. A party to an action may make application to the Chief Appeal Commissioner for a determination under the "bar to suit" provision.

Since its formation, the Tribunal has had occasion to make rulings on the "right of action," or related matters, in several cases. In 2000, several applications were received under s. 29 of the Act, four of which proceeded to a decision.

While relatively few in number as compared with compensation-related appeals, the Tribunal's determinations under s. 29 of the Act are of significance. These decisions assist in clarifying the legal rights and obligations of employers and workers, respectively, and operate as a first-instance determination of the right to bring legal action against an employer.

The following is a summary of some of the decisions rendered by the Tribunal and the courts in the past year, under s. 29:

- In Decision 99-876-TPA (August 30, 2000), a Tribunal panel decided that a civil action against several medical professionals and a hospital, for allegedly negligent medical treatment following a workplace injury, could be sustained. The Tribunal's decision was under appeal to the Court of Appeal, as of April, 2001.

- An interpretation of the statutory provision permitting an action to be taken against a third party *with the consent of the Board* was made in 2000-285-TPA (December 27, 2000). The Tribunal concluded that the right of action, the right to bring the action, and any aspect of the action are fully vested in the Board, and that the exercise of the Board's discretion to give or withhold consent to the worker proceeding with the action is not subject to scrutiny.

- Decision 2000-305-TPA (March 19, 2001) held that one of the applicant-employers was not an 'employer" within the meaning of the Act, so as to bring it within the protection afforded by s. 28(1), since it did not operate in Nova Scotia or pay premiums to the Nova Scotia Board. The action against the second employer did not fall within the exception to the bar pertaining to "the use or operation of a motor vehicle," in s. 28(2). The Tribunal held that the section should be interpreted as creating an exception for those matters that would be covered by mandatory motor vehicle insurance held by other employers. In this case, the nature of the action was that of product liability rather than "the use or operation of a motor vehicle," because it involved a suit against the manufacturer of a faulty car seat, which allegedly caused injury to the worker when it malfunctioned while he was driving.

**OTHER DECISIONS OF NOTE**

- **"direct and immediate interest":** In Decision 2000-29-PAD (April 5, 2000), a Tribunal panel ruled that a union did not have a direct and immediate interest in the matter under appeal and, consequently, could not join the appeal as a participant.

- **"solicitor-client privilege":** Decision 2000-161-IAD (March 28, 2001) endorsed a claim for solicitor-client privilege in relation to a letter from the Workers' Adviser to a psychiatrist requesting a medical report for purposes of the worker's appeal.

- **natural justice:** In *MacNeil v. Workers' Compensation Board (N.S.) et al*, 2001 NSCA 3, the Court held that the Tribunal lost jurisdiction when it not only failed

to address the only question that was put to it by counsel for both parties, but rendered a decision on a different question, not put to it by either party, without giving any of the parties an opportunity to make submissions and be heard on the question.

- **jurisdiction of Tribunal over subject matter of appeal:** In Decision 2000-275-AD (January 31, 2001), the Tribunal decided that it had no jurisdiction to determine whether the *Bankruptcy and Insolvency Act* had been breached or, in the event of such a breach, to make findings as to the appropriate remedy. Decision 99-1763-AD (September 11, 2000) held that the Tribunal had no jurisdiction to make an award of costs.

- **tribunal practice on appeal:** In *Durnford v. Workers' Compensation Board (N.S.) et al.*, 2000 NSCA 122, the Court of Appeal spoke in detail about the degree of deference owed by Appeal Commissioners to Hearing Officers, on appeal and adopted the Tribunal's statements o. this issue.

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***"It is clear from the variety of factors to be considered by the Tribunal pursuant to s. 246, in addition to the record of the hearing at the Board level, that the legislature could not have intended for the Tribunal to pay a high degree of deference to conclusions reached by the Board. Consideration of the additional factors requires an independent adjudicative assessment by the Tribunal and sharply curtails any deference that can be paid to the conclusions, as opposed to findings of credibility or particular facts, by the hearing officer. I would agree with the appeals commissioner that appeals under this section are of a hybrid nature combining features of appeals de novo with reviews of the record."***

***- Durnford v. Workers' Compensation Board (N.S.) et al., 2000 NSCA 122, at page 6***

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The substantive legal issue before the Court was whether the Tribunal had erred in determining whether there was a causal connection between the worker's lateral epicondylitis and her employment. The Court concluded that the Appeal Commissioner was not in error with respect to the legal principles she adopted. The Court also concluded that the Tribunal was applying its own statute to facts on which the worker's entitlement to compensation depended, and that this was a matter within its core jurisdiction. Consequently the Tribunal had committed no error.

# Appeals from WCAT Decisions

Appeals before the courts grew during 2000 as the Tribunal continued to release large numbers of decisions, many of which addressed new and important issues for the Workers' Compensation system. On average, there were 25 non-chronic pain appeals from WCAT decisions before the Nova Scotia Court of Appeal, at any given time during the year. The Court released 21 decisions pertaining to WCAT matters: 7 of the appeals were allowed on the merits, and 14 were dismissed on leave or on the merits.

By March 31, 2001, many of the outstanding appeals before the Court were chronic pain, Charter-related, although these appeals were not active. There were also 29 active, non-chronic pain appeals and judicial review proceedings combined.

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*"In the past year, the Court of Appeal has issued several benchmark decisions interpreting an Act which is complex and still relatively new. With each major decision, the law and our understanding of it continues to develop. Apart from challenges as to jurisdiction, the Tribunal's role in the appeal process is necessarily a limited one. I have found, however, that our participation within the appeal process ensures that the Tribunal as a whole benefits from the argument and discussion surrounding the important issues considered by the Court of Appeal."*

*- Louanne Labelle, Appeal Commissioner*

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**Chronic Pain Appeals**

With respect to the chronic pain appeals, we note that most of the Tribunal's chronic pain decisions involving workers injured outside of the "window period" were appealed to the Court of Appeal and that those appeals were based on *Charter* grounds.

Tribunal decisions in approximately 17 "Appeal Board backlog" chronic pain appeals were rendered in February and March 2000, applying the Tribunal's January 31, 2000 panel decisions on chronic pain (Decision 98-077-AD and Decision 99-641-AD). Appeals taken from these decisions to the Nova Scotia Court of Appeal relied on grounds that included that the Tribunal had exceeded its jurisdiction in applying the *Charter* and that it erred in finding the Act's chronic pain provisions unconstitutional.

With the exception of "window period" and "Appeal Board Backlog" chronic pain cases, no final decisions were rendered by the Tribunal in relation to chronic pain between February 2, when the Board's adjournment of appeals was effected, and December 8, 2000, when the adjournment was removed. The Tribunal proceeded to render final decisions on the remaining chronic pain appeals between February and April 2001. These decisions have now been appealed to the Court of Appeal.

As of March 31, 2001, 95 chronic pain appeals from Tribunal decisions were before the Court of Appeal. In all cases, the appeals were adjourned until September 6, 2001, in anticipation that a decision on leave from the Supreme Court of Canada will have been received in *Martin* prior to that date.

**Transitional Provisions**

Another large grouping of appeals filed with the Court were those taken from decisions concerning calculation of permanent benefits for workers injured during the window period. The Court overturned the Tribunal on this issue in *Ryan*. At the time of its decision in *Ryan*, there were approximately 22 companion appeals before the Court of Appeal. In light of the Court's ruling, the appeals on related issues were largely resolved by Consent Order.

**Government Employees Compensation Act (GECA)**

Following the Court's decision in *Salloum*, judicial review proceedings challenging WCAT decisions in relation to workers covered by the GECA were taken in the Supreme Court of Nova Scotia. As of March 31, 2001, there were three such review proceedings outstanding.

# The Backlog Period

**MAINTAINING DECISION QUALITY AND CONSISTENCY**

While focusing much of its attention on decision production during the backlog period, the Tribunal also made efforts to promote the issuance of high-quality and consistent decisions. In support of this objective, several forums for discussion of legal and procedural issues were utilized.

- The Tribunal conducted monthly meetings of all Appeal Commissioners, during which final WCAT decisions of significance and decisions of the Nova Scotia Court of Appeal were discussed.

- Regular team meetings were held on a monthly or bi-monthly basis, during which legal issues arising out of draft decisions were discussed on a voluntary basis, as well as other legal and procedural issues.

- An Issues Committee was maintained, consisting of five to six Appeal Commissioners drawn from the existing Appeal Commissioner teams. The Committee was a voluntary forum for discussion of legal issues arising out of draft decisions of significance to the Tribunal or to the Workers' Compensation system.

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*"Attending the Canadian Council of Administrative Tribunals conference provided me with an opportunity to meet with counterparts in workers' compensation systems across Canada and to discuss the common challenges which face us all."*

*- Angela Green, Appeal Commissioner*

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The Tribunal also developed Decision Compendia—analytical summaries of important Tribunal and Court of Appeal decisions on particular topics, for internal use.

Some attention was placed on the professional development and training of Appeal Commissioners, including orientation sessions on using the Tribunal's decision and headnote databases.

Formal continuing education sessions included a three-day course in decision writing and conducting hearings, attended by some of the more recently appointed Commissioners, in May. Appeal Commissioners who had not been involved in conducting oral hearings during the first part of the year were introduced to the conduct of oral hearings through an extensive orientation program led by more senior Commissioners in June and July.

# Looking Ahead:

**INITIATIVES TO IMPROVE WCAT'S STRUCTURE AND FUNCTIONING**

The Tribunal's efforts were almost exclusively devoted to decision production and the maintenance of decision quality and consistency during the backlog period—that is, until mid-October 2000. Once the goal of backlog elimination was achieved, the Tribunal was able to turn its attention to measures for improving the overall structure and functioning of the Tribunal.

Enhancement of decision quality, efficiency of service delivery, and cost-effectiveness of Tribunal operations were driving forces in the identification of initiatives for 2000–01. Unfortunately, the decision-writing focus, which occupied the majority of the year, left us little time for the development of strategic initiatives as part of a comprehensive business plan. Nevertheless, we anticipate implementing measures in the new fiscal year that will be complementary to the Tribunal's overall goals and an integral part of the Tribunal's long-term plan.

The following is a brief description of the most significant of the Tribunal's initiatives for 2001–02.

**Management of Appeals of WCAT Decisions**

Throughout its history, WCAT has retained legal counsel by way of contract with the Department of Justice. Counsel have assisted WCAT in monitoring and managing appeals before the courts from WCAT decisions. WCAT's participation in appeals has been of a limited nature, consisting primarily of observation of appeal hearings and the provision of assistance to the courts in understanding the appeal record and speaking to the Tribunal's jurisdiction, where appropriate.

With the increased volume of appeals, managing these activities, as well as providing instructions to counsel and monitoring the court's decisions, became an increasing challenge for the Chief Appeal Commissioner. In order to ensure that these important activities were maintained, Appeal Commissioners Karen Crombie, Louanne Labelle, and Sandy MacIntosh provided significant assistance to the Chief Appeal Commissioner.

Commissioners Crombie and Labelle became counsel of record for the Tribunal in chronic pain proceedings where *Charter* issues had been raised. This resulted from the involvement in these appeals of the office of the Attorney General, which meant that our legal counsel could not represent WCAT. With the assistance of Commissioners Crombie and Labelle, the Tribunal filed a pre-hearing brief in the *Martin* appeal, regarding the Tribunal's jurisdiction to apply the *Charter*.

Commissioners Crombie and Labelle also appeared and made legal argument on behalf of the Tribunal in the *Martin* appeal.

The decision to take carriage, in-house, of Court of Appeal matters was prompted in part by our experience with in-house representation of chronic pain Charter appeals. In addition, the Tribunal foresaw a benefit to the conduct of "watching briefs" by Tribunal members who could report directly to Appeal Commissioners on court proceedings and rulings and the judgments of the court in particular appeals. Further, there was an anticipated cost savings to the Tribunal from in-house management of appeal matters before the courts.

In February and March, the Tribunal began training support staff to manage the correspondence and other matters that it was preparing to assume in relation to WCAT appeals before the courts. Commissioner Labelle, assisted by Commissioner MacIntosh, prepared to assume the role of counsel to the Tribunal in relation to Court of Appeal matters.

As part of the management of appeals from WCAT decisions, monthly reports are provided to the Chief Appeal Commissioner by WCAT's Court of Appeal representatives, addressing specific matters before the courts as well as statistics. Charts illustrating pertinent information concerning particular appeals are maintained and circulated monthly to the Chief Appeal Commissioner and to representatives of the Workers' Compensation System's Tripartite Committee. Court decisions are summarized and circulated to Appeal Commissioners as soon as obtained, and the Court of Appeal representatives report verbally to Appeal Commissioners at WCAT's monthly meetings regarding Court of Appeal matters.

**Development of Policies and Procedures**

The Tribunal began preparations for a policy development project starting in April 2001, to be conducted by a Policy Team. The Policy Team is to be led by Appeal Commissioner Michael Hadskis, who has been designated as Policy Analyst for the Tribunal. The Policy Analyst will be assisted by Commissioners Sandy MacIntosh and Allen Murray. The team has been given the task of developing external policies to guide the conduct of appeal participants as well as policies governing decision-making criteria for Appeal Commissioners. The team began its preliminary work in 2000 by assisting in the development of detailed position descriptions for the Policy Analyst and Policy Team members. The team also began to determine the scope of the policy project and to set priorities for policy development. The work of the Policy Team was to begin in April and to be concluded by March 31, 2002.

**Tribunal Research Officer**

In the interests of promoting decision quality the Tribunal has identified a role for a Research Officer, to be filled by Appeal Commissioner Jeannine Kurtz. She will be responsible for assisting Appeal Commissioners with legal research, assisting the Chief Appeal Commissioner in the purchase of materials for the WCAT library collection, and overseeing the Tribunal's full-text decision and headnote databases. The role has been identified as a part-time initiative for the coming year.

In addition to the Research Officer's services, WCAT will be receiving library services from staff of the Department of Justice library, beginning in 2001. To this point, WCAT's library needs have been ably accommodated by the Department of Environment and Labour staff. The move to the Department of Justice library is consistent with the trend toward consolidation of WCAT's support services in the Department of Justice, and it allows for a cost savings to be realized. Management of WCAT's decision database and headnote—that is, decision summary—database will continue to be facilitated by the Department of Environment and Labour library in consultation with WCAT's Research Officer.

In the longer term, WCAT hopes to involve the Research Officer in the preparation or editing of headnotes and the supervision of in-house management of the full text and headnote databases. This will enable a greater degree of quality control over decision headnotes, thereby enhancing their usefulness as a research tool for Appeal Commissioners as well as the subscribing public.

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*"I look forward to seeing the development of the Tribunal in areas such as the registration of appeals, monitoring of appeals from WCAT decisions, policy development, and research and information services. These initiatives are an important adjunct to the Tribunal's core activity. Their introduction represents a new phase in the life of the Tribunal now that the backlog has been eliminated."*

*- Katherine Carrigan, Chief Appeal Commissioner*

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**Tribunal Registrar**

Management of the initial phase of the appeal process—from the filing of Notices of Appeal to the assignment of appeals to Commissioners for the purposes of decisions—is a significant aspect of the Tribunal's work. In the past, this phase of the appeal process has been managed by the Chief Appeal Commissioner, with the assistance of the Tribunal's Team Leaders. The Tribunal has developed a Registrar role in order to effectively manage the appeal intake phase, including treating like appeals in a consistent manner. The Registrar position will be filled by Appeal Commissioner Leanne Rodwell Hayes, on a part-time basis, while she continues with decision-writing duties the remainder of the time. During the latter

part of 2000, we developed a position description for the Registrar role and examined our internal processes for appeal management in preparation for Commissioner Rodwell Hayes' assumption of Registrar duties in April 2001.

The Registrar will be responsible for issuing letters indicating deadlines for receipt of submissions and evidence in appeals proceeding by way of paper review and will notify appeal participants of the mode of hearing—whether paper review or oral hearing. Requests for adjournment or postponement of appeals will also be considered and dealt with by the Registrar. As an adjunct to the Registrar's main functions, this position will also involve supervision of the oral hearing scheduling process and the assignment of appeals to Appeal Commissioners.

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write:

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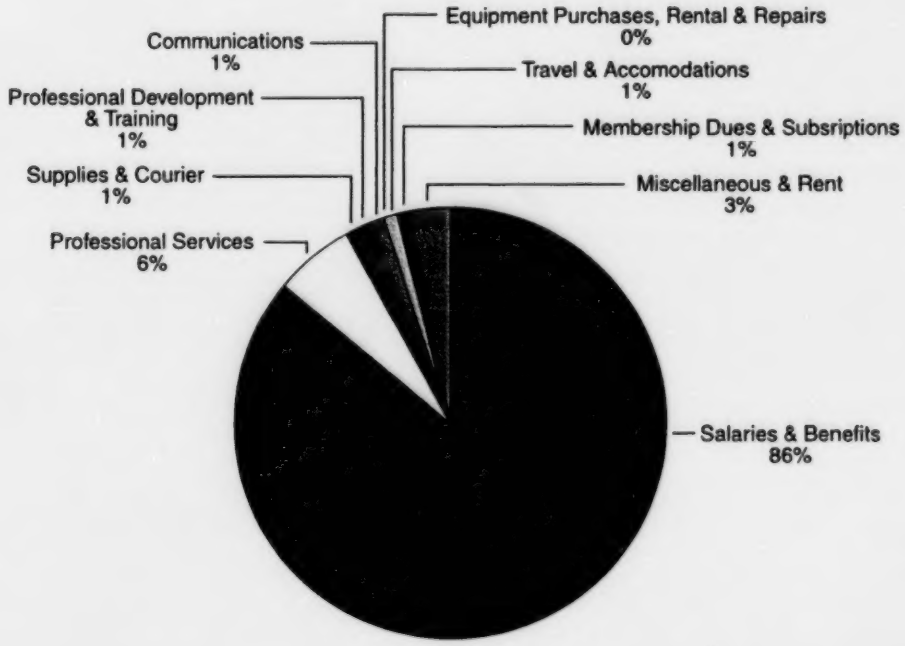
telephone: (902) 424-2250
or toll-free in Nova Scotia: 1-800-274-8281
fax: (902) 424-2321

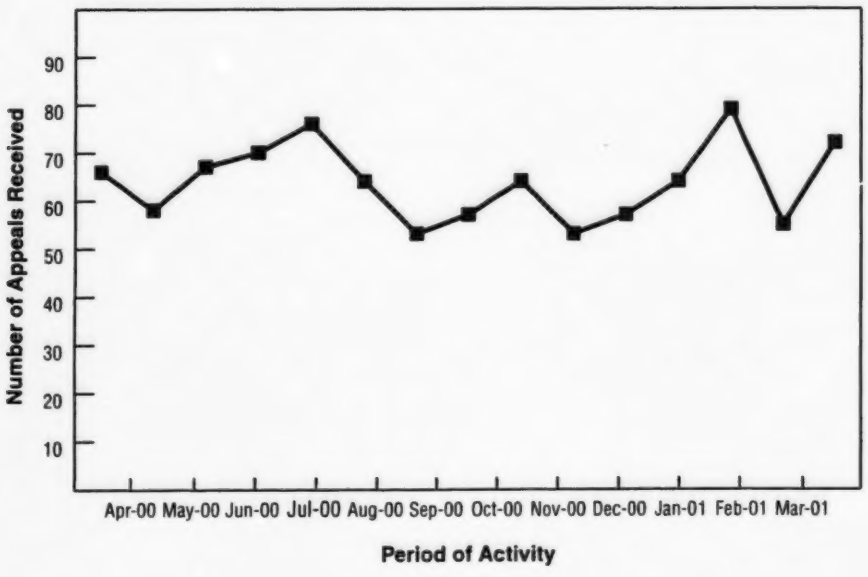
# Budget Expenditures for the Fiscal Year Ending March 31, 2001

| | |
|---|---|
| Regular salaries & benefits | $918,553.44 |
| Bill 90 salaries & benefits | $475,533.79 |
| Professional services | $128,036.51 |
| Supplies & courier | $18,862.18 |
| Professional development & training | $18,955.50 |
| Communications | $28,926.46 |
| Equipment purchases, rental, & repairs | $10,128.90 |
| Travel & accomodations | $23,826.10 |
| Membership dues & subscriptions | $18,088.04 |
| Miscellaneous & rent | $65,658.59 |
| **Total** | **$1,709,569.51** |



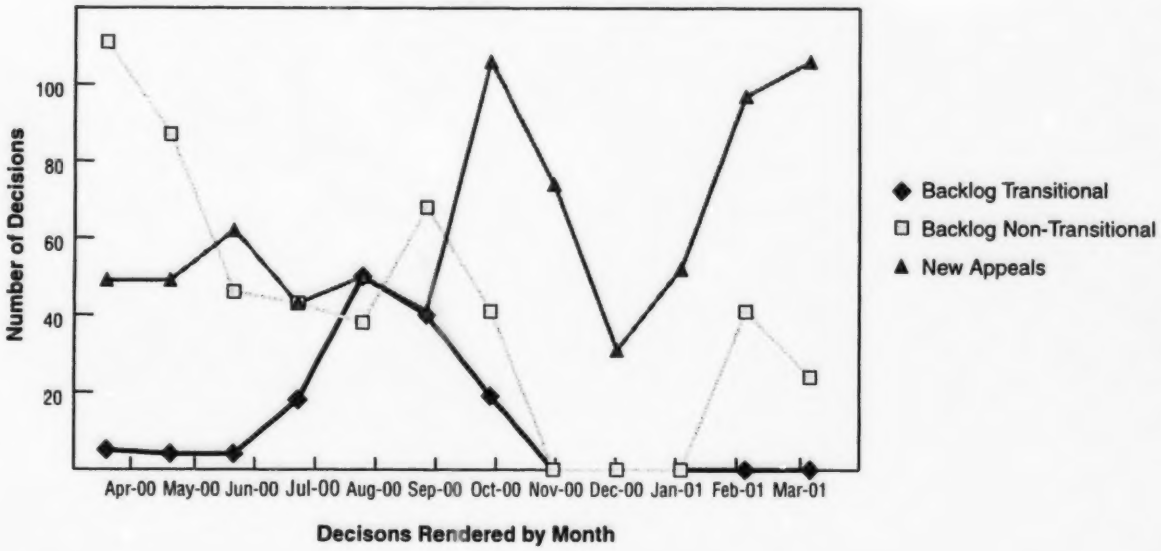
# Appeals Received

| Month | Number Received |
|---|---|
| April 2000 | 66 |
| May 2000 | 58 |
| June 2000 | 67 |
| July 2000 | 70 |
| August 2000 | 76 |
| Sept. 2000 | 64 |
| Oct. 2000 | 53 |
| Nov. 2000 | 57 |
| Dec. 2000 | 64 |
| Jan. 2001 | 79 |
| Feb. 2001 | 55 |
| March 2001 | 72 |
| **TOTALS** | **781** |



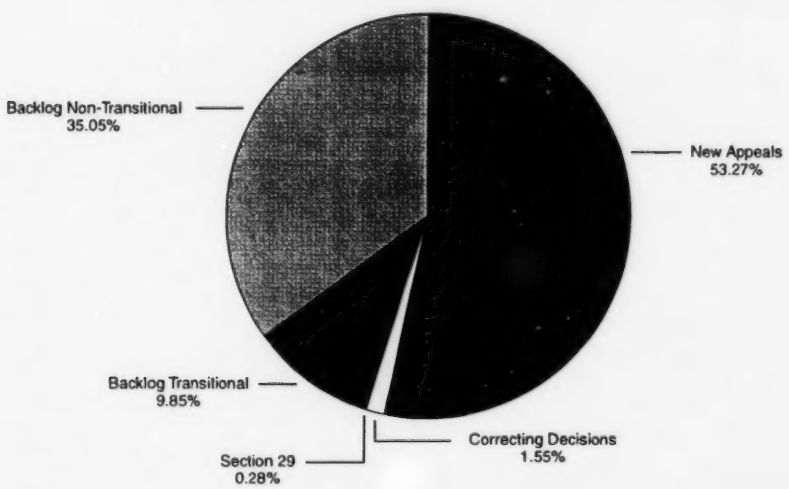
# Final Decisions Rendered

| | Backlog Appeals | | New Appeals | Total |
|---|---|---|---|---|
| | Transitional | Non-Transitional | | |
| April 2000 | 5 | 111 | 49 | 165 |
| May 2000 | 4 | 87 | 49 | 140 |
| June 2000 | 4 | 46 | 62 | 112 |
| July 2000 | 18 | 43 | 43 | 104 |
| August 2000 | 50 | 38 | 50 | 138 |
| Sept. 2000 | 40 | 68 | 41 | 149 |
| Oct. 2000 | 19 | 41 | 106 | 166 |
| Nov. 2000 | 0 | 0 | 74 | 74 |
| Dec. 2000 | 0 | 0 | 31 | 31 |
| Jan. 2001 | 0 | 0 | 52 | 52 |
| Feb. 2001 | 0 | 41 | 97 | 138 |
| March 2001 | 0 | 24 | 106 | 130 |
| **TOTALS** | **140** | **499** | **760** | **1399** |



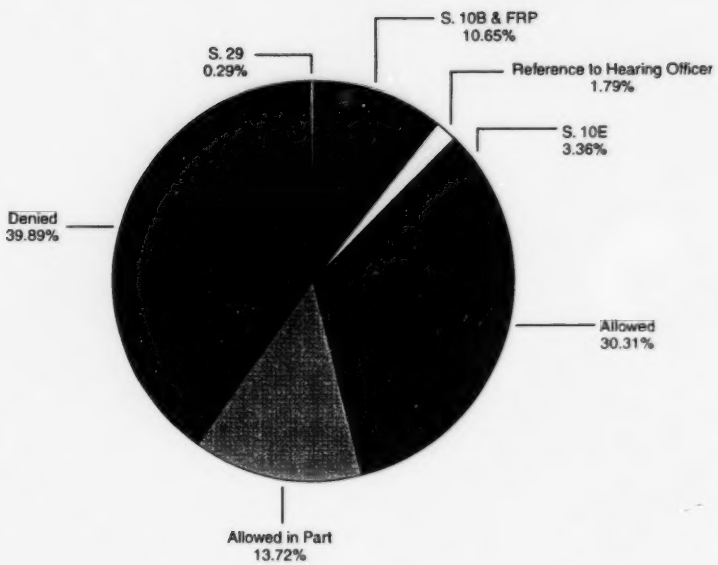
# Final Decisions by Appeal Category

| | | |
|---|---|---|
| Backlog | | |
| Transitional Final Decisions | | **140** |
| Allowed | 47 | |
| Allowed in part | 38 | |
| Denied | 44 | |
| Resolved under Section 10B | 0 | |
| References to Hearing Officer | 1 | |
| Resolved by Section 10E | 10 | |
| Preliminary Decisions | | *1* |
| Non-Transitional Final Decisions | | **499** |
| Allowed | 170 | |
| Allowed in part | 79 | |
| Denied | 160 | |
| Resolved under Section 10B | 58 | |
| Section 29 applications | 1 | |
| References to Hearing Officer | 5 | |
| Resolved by Section 10E | 26 | |
| Preliminary Decisions | | *28* |
| New Appeals (Received on and after October 16, 1999) | | |
| Final Decisions | | **760** |
| Allowed | 206 | |
| Allowed in Part | 75 | |
| Denied | 355 | |
| Resolved under Section 10B | 91 | |
| Section 29 applications | 3 | |
| References to Hearing Officer | 19 | |
| Resolved by Section 10E | 11 | |
| Preliminary Decisions | | *78* |
| Correcting decisions rendered | | **22** |
| **Total of all decisions released, including final, preliminary, and correcting** | | **1528** |



# Final Decisions by Outcome

| | Allowed | Allowed in Part | Denied | Reference to Hearing Officer | 10B & FRP | S.10E | S.29 | Total Appeal |
|---|---|---|---|---|---|---|---|---|
| Backlog | 217 | 117 | 204 | 6 | 58 | 36 | 1 | 639 |
| New Appeals | 206 | 75 | 355 | 19 | 91 | 11 | 3 | 755 |
| **Total by Outcome** | **423** | **192** | **559** | **25** | **149** | **47** | **4** | **1399** |



# Mode of Hearing

| Month Decision Resolved | OHR/ OHG | OHR / PRG | PRR / OHG | PRR / PRG | Total by Month |
|---|---|---|---|---|---|
| April 2000 | 29 | 64 | 23 | 70 | 165 |
| May 2000 | 47 | 52 | 1 | 40 | 140 |
| June 2000 | 37 | 46 | 1 | 28 | 112 |
| July 2000 | 37 | 28 | 0 | 39 | 104 |
| August 2000 | 48 | 63 | 0 | 27 | 138 |
| September 2000 | 22 | 99 | 1 | 27 | 149 |
| October 2000 | 26 | 79 | 1 | 60 | 166 |
| November 2000 | 13 | 29 | 1 | 31 | 74 |
| December 2000 | 8 | 9 | 0 | 14 | 31 |
| January 2001 | 17 | 9 | 2 | 24 | 52 |
| February 2001 | 18 | 61 | 0 | 59 | 138 |
| March 2001 | 36 | 38 | 0 | 56 | 130 |
| **Totals by Type** | **338** | **577** | **9** | **475** | **1399** |

**Legend:**

OHR - Oral Hearing Requested
OHG - Oral Hearing Granted
PRR - Paper Review Requested
PRG - Paper Review Granted

# Appeal Hearings